



Office of the Attorney General  
State of Texas

July 22, 1993

DAN MORALES  
ATTORNEY GENERAL

Mr. Bill Chiabotta  
Director of Personnel  
City of Mesquite  
Box 850137  
Mesquite, Texas 75185-0137

OR93-484

Dear Mr. Chiabotta:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19753.

The City of Mesquite (the "city") has received a request for "the personnel file of [the] past city attorney, in its entirety." You claim that parts of the personnel file are excepted from public disclosure under the Open Records Act (the "act"). You specifically raise section 3(a)(2)<sup>1</sup> and section 3(a)(1) of the act as it incorporates the Medical Practice Act, V.T.C.S. article 4495b, and provisions governing the Texas Municipal Retirement System, V.T.C.S. subtitle G, chapter 851.<sup>2</sup>

Section 3(a)(1) excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Both the Medical Practice Act and statutes governing the Texas Municipal Retirement System contain confidentiality provisions. The Medical Practice Act provides that

[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

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<sup>1</sup>Although you raise provisions governing the Texas Municipal Retirement System under section 3(a)(2), they are more appropriately raised under section 3(a)(1).

<sup>2</sup>We note that you only submitted a few documents for our consideration and you do not raise any exceptions in reference to the remainder of the personnel file. We assume this information has been or will be released to the requestor.

V.T.C.S. art. 4495b, § 5.08(b). You have submitted for our review a physician's statement dated October 28, 1985, and an attached prescription. Because these records were created by a physician, you must withhold them from disclosure under the Medical Practice Act.

A statute governing the Texas Municipal Retirement System provides that

[i]nformation contained in records *that are in the custody of the retirement system* concerning an individual member, retiree, annuitant, or beneficiary is confidential under Section 3(a)(1), Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and may not be disclosed in a form identifiable with a specific individual . . . .

Gov't Code § 855.115(a) (emphasis added). The statement of estimated retirement benefits and a document entitled "ANNUAL STATEMENT OF ACCUMULATED DEPOSITS" submitted to this office are not "in the custody of the retirement system," but rather in the custody of the city. Therefore, you may not withhold them under Government Code section 855.115(a).

Section 3(a)(2) excepts

information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and transcripts of professional public school employees; provided, however, that nothing in this section shall be construed to exempt from disclosure the degree obtained and the curriculum on such transcripts of professional public school employees, and further provided that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act.

Section 3(a)(2) protects personnel file information only if its release would cause an invasion of privacy under the test articulated for common-law privacy under section 3(a)(1). *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.) (court ruled that test to be applied in decision under section 3(a)(2) was the same as that delineated in *Industrial Foundation of the South* for section 3(a)(1)). In order for information to be brought within the common-law right of privacy under section 3(a)(1), the information must meet the criteria set out in *Industrial Found. of the*

*S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

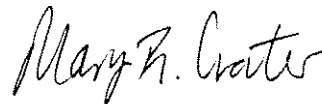
information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4.

The two documents from the Texas Municipal Retirement System contain information concerning the former employee's beneficiary. This information is highly intimate and is of no legitimate interest to the public and is therefore excepted from public disclosure by the common-law right of privacy. Open Records Decision No. 600 (1992) at 11. The remainder of the information submitted for our review consists of letters to and from the employee's insurance carrier concerning medical treatment of the former employee's dependents. Information regarding illnesses or operations is intimate personal information. Open Records Decision No. 455 (1987) at 9. We do not believe the public has a legitimate interest in the medical condition of a public employee's dependents. Accordingly, you may withhold the remainder of the information from public disclosure under section 3(a)(2).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

MRC/LBC/lmm

Ref.: ID# 19753  
ID# 19987

Enclosures: Submitted documents

cc: Terry Hardy  
3005 Deepwell  
Balch Springs, Texas 75180  
(w/o enclosures)